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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Johnna Vanbuskirk**, an individual,  
Plaintiff,  
v.  
**R.M. Galicia, Inc., d/b/a  
Progressive Management Systems**,  
a corporation,  
Defendant.

Case No. '14CV2137 W JLB

**Complaint for Damages**

Jury Trial Demanded

**Introduction**

1. Johnna Vanbuskirk (“Plaintiff”), brings this action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of R.M. Galicia, Inc., d/b/a Progressive Management Systems (“Defendant”), and their agents with regard to attempts by Defendants, debt collectors, to unlawfully and abusively collect a debt, causing Plaintiff damages.

2. For purposes of this Complaint, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of Defendant(s) named in this caption.

## **Jurisdiction and Venue**

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C § 1367 for pendent state law claims.

4. This action arises out of Defendants’ violations of the following: the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”), the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (“RFDCPA”).

5. Venue is proper in this District pursuant to 28 U.S.C § 1391(b), in that the Defendants transact business in this District and the acts giving rise to this action occurred in this District.

## **Parties**

6. Plaintiff is a natural person who resides in the County of San Diego, State of California and is obligated or allegedly obligated to pay a debt and is a “consumer” as that term is defined by 15 U.S.C § 1692a(3).

7. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff and is a “debtor” as the term is defined by Cal. Civ. Code § 1788.2(h).

8. Plaintiff is informed and believes, and thereon alleges, that Defendant is a collection agency and a California corporation operating from an address of 1521 W. Cameron Avenue, 1<sup>st</sup> Floor, West Covina, California 91790, and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

9. Plaintiff is informed and believes, and thereon alleges, that Defendants are not attorneys or counselors at law and are persons who, in the ordinary course of business, regularly, on behalf of themselves or others, engages

1 in debt collection as that term is defined by Cal. Civ. Code § 1788.2(b), and are  
2 “debt collectors” as that term is defined by Cal. Civ. Code § 1788.2(c).

### 4 **Factual Allegations**

5 1. Sometime before July 2013, Plaintiff allegedly incurred two separate  
6 financial obligations. One to Sharp Chula Vista Medical Center and the other to  
7 Grossmont Hospital Corporation that were money, property, or their equivalent,  
8 which is due or owing, or alleged to be due or owing, from a natural person to  
9 another person and were therefore “debt(s)” as that term is defined by Cal. Civ.  
10 Code § 1788.2(d) and a “consumer debt” as that term is defined by Cal. Civ. Code  
11 § 1788.2(f).

12 2. These financial obligations were primarily for personal, family or  
13 household purposes, more specifically, medical services, and are therefore  
14 “debt(s)” as that term is defined by 15 U.S.C § 1692a(5).

15 3. On or before July 2013, Plaintiff fell behind in the payments allegedly  
16 owed on the alleged debt.

17 4. Plaintiff is informed and believes, and thereon alleges, that  
18 subsequent to falling behind on payments on the alleged debt for the medical  
19 services, the alleged debts were assigned, placed, or otherwise transferred to  
20 Defendant for collection.

### 21 ***March 15, 2014 Voicemail Message***

22 5. On March 15, 2014, at approximately 11:30 a.m., Defendant’s agent,  
23 John Doe, called Plaintiff on her cellular telephone and left her a voicemail  
24 message. That voicemail message falls within the term “communication” as it is  
25 defined by 15 U.S.C § 1692a(2) and a “debt collection” as that term is defined by  
26 Cal. Civ. Code § 1788.2(b).

27 6. The voicemail message is transcribed below in its entirety.  
28

1 “Message for Johnna Van-Van-ahh-buskirk if reached  
 2 wrong number for this person please call us back at 866  
 3 767-2296 and press 2 to remove the phone number. If  
 4 this is not a Johnna Vans-Vans-burkirk please hang up.  
 5 If this is a Johnna please continue to listen to this  
 6 message. Johnna you should now listen to this message  
 7 so that other people can’t hear it as it contains personal  
 8 and private information. This is a communication from a  
 9 debt collector. All information obtained will be used for  
 10 that purpose. 866 767-2296. Thank you.”

11 7. 15 U.S.C. § 1692d(6) prohibits the placement of telephone calls  
 12 without meaningful disclosure of the caller’s identity. Similarly, Cal. Civ. Code §  
 13 1788.11(b) prohibits the placing of telephone calls without disclosure of the  
 14 caller’s identity, provided that an employee of a licensed collection agency may  
 15 identify himself by using his registered alias name as long as he correctly identifies  
 16 the agency he represents.

17 8. In the voicemail message, Defendant fails to identify the name of the  
 18 agency he represents and his own name and/or alias, therefore leaving no  
 19 meaningful disclosure of the caller’s identity. Accordingly, Defendant’s conduct  
 20 violates 15 U.S.C. § 1692d(6) and Cal. Civ. Code § 1788.11(b).

21 9. In violating 15 U.S.C. § 1692d(6), Defendant’s conduct also violates  
 22 Cal. Civ. Code § 1788.17.

### 23 ***Respondeat Superior Liability***

24 10. The acts and omissions of John Doe, a debt collector employed as an  
 25 agent by Defendant who communicated with Plaintiff as described in this  
 26 Complaint, were committed within the time and space limits of their agency  
 27 relationship with their principal, Defendant.

28 11. The acts and omissions by John Doe, were incidental to, or of the  
 same general nature as the responsibilities that agents were authorized to perform  
 by Defendant in collecting consumer debts.

13. Defendant is therefore liable to Plaintiffs through the Doctrine of  
Respondeat Superior for the intentional and negligent acts, errors, and omissions  
done in violation of state and federal law by John Doe including but not limited to  
violations of the FDCPA and RFDCPA.

10           14. Plaintiff incorporates by reference all of the above paragraphs of this  
11 Complaint as though fully stated herein.

16. As a result of each and every one of Defendant's violations of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

17. Plaintiff re-alleges and incorporates by reference the above paragraphs  
as though set forth fully herein.



1 Civ. Code § 1788.17, from Defendant.

2  
3 **Trial By Jury**

4 Pursuant to the Seventh Amendment to the Constitution of the United States  
5 of America, Plaintiff is entitled to, and demands a trial by jury.

6  
7 Dated: September 9, 2014.

Law Offices of Roberto Robledo

8 */s/ Roberto Robledo*

9  
10 Attorneys for Plaintiff